



## Flathead County Planning & Zoning

40 11<sup>th</sup> Street West, Suite 220 Kalispell, MT 59901  
Telephone 406.751.8200 Fax 406.751.8210



### APPLICATION FOR A VARIANCE

Submit this application, all required information, and appropriate fee (see current fee schedule)  
to the Planning & Zoning office at the address listed above.

**FEE ATTACHED \$ 1080.00**

Before completing this application please read instructions on page 4.

**1. OWNER:**

Name: JTC Properties, LLC

Address: 365 Riverbend Road Phone: 406-270-5440

City/State/Zip: Bigfork, MT 59911

Email: timcontractor@msn.com

**INTEREST IN PROPERTY:** Owner

**2. APPLICANT:** *(If different from above)*

Name: ART Property Management, LLC, Aja Thomas, Property Manager/Owner

Address: 805 Broken Choker Ln Phone: 406-407-4015

City/State/Zip: Bigfork, MT 59911

**3. TECHNICAL/PROFESSIONAL ASSISTANCE:** *(If applicable)*

Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email: \_\_\_\_\_

**4. LOCATION OF PROPERTY FOR WHICH VARIANCE IS SOUGHT:**

Physical Address: 283 & 287 Eagle Bend Drive, Bigfork, MT 59911

**5. ZONING DISTRICT:** Bigfork **ZONING DESIGNATION:** RC-1

**6. DATE PROPERTY ACQUIRED:** April 11, 2019

**7. LEGAL DESCRIPTION:**

Subdivision *(if applicable)* Eagle Bend 20 Lot/Tract(s) Lot 56A

Assessor # 0000973451 Section 26 Township 27 Range 20 West

8. **REQUEST FOR A VARIANCE FROM THE PROVISIONS OF** *(State Section, Part, and Paragraph of the Zoning Regulations):* See Exhibit A

9. **THIS IS A REQUEST FOR A VARIANCE IN RELATION TO THE PROVISIONS OF THE REGULATIONS** *(check one below):*

Area \_\_\_\_\_ Yard \_\_\_\_\_ Height \_\_\_\_\_  
Coverage X \_\_\_\_\_ Parking \_\_\_\_\_ Other \_\_\_\_\_

10. **STATE SPECIFICALLY THE CHANGE(S) PROPOSED AND THE REASON(S) SUCH CHANGE(S) ARE NECESSARY** *(use additional sheet if necessary):*  
See Exhibit A

11. **EXPLAIN HOW YOUR CASE CONFORMS TO EACH OF THE FOLLOWING REQUIREMENTS** *(be complete, use additional sheet if necessary):*

A. Strict compliance with the provisions of these regulations will:  
i. Limit the reasonable use of the property,  
See Exhibit A

ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.  
See Exhibit A

B. The hardship is the result of lot size, shape, topography, or other circumstance over which the applicant has no control.  
See Exhibit A

C. The hardship is peculiar to the property.  
See Exhibit A

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D. The hardship was not created by the applicant.  
See Exhibit A

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E. The hardship is not economic (*where a reasonable or viable alternative exists*).  
See Exhibit A

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F. Granting the variance will not adversely affect the neighboring properties or the public.  
See Exhibit A

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G. The variance requested is the minimum variance, which will alleviate the hardship.  
See Exhibit A

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H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.  
See Exhibit A

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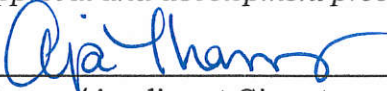
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## 12. ATTACH A PLOT PLAN OR DRAWING.

*I hereby certify under penalty of perjury and the laws of the State of Montana that the information submitted herein, on all other submitted forms, documents, plans or any other information submitted as part of this application, to be true, complete, and accurate to the best of my knowledge. Should any information or representation submitted in connection with this application be incorrect or untrue, I understand that any approval based thereon may be rescinded or other appropriate action taken. The signing of this application signifies approval for FCPZ staff to be present on the property for routine monitoring and inspection during the approval and development process.*

  
\_\_\_\_\_  
Owner/Applicant Signature

November 17, 2020

\_\_\_\_\_  
Date

### **INSTRUCTIONS FOR VARIANCE APPLICATION**

1. ANSWER ALL QUESTIONS. Answers should be clear and contain all the necessary information.
2. In answering Question 7, refer to the classification system in the Zoning Regulations and explain in detail the specific standards from which the applicant is seeking relief.
3. In answering Question 9, be specific and complete. In this and all other questions, if additional space is needed you may use additional paper, and list which section number you are continuing.
4. Answer Question 10, A-H completely and fully.
5. A copy of the plot plan or site plan must be submitted with each application (*Please include 6 copies if you submit a size larger than 11x17*).
6. A separate fee made out to 'GIS' for the 'Adjoining Property Owners List'. The list will be sent directly to the Planning & Zoning office and is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.
7. A fee per the FCPZ schedule of fees for a variance application must be submitted with this application to cover the cost of necessary investigation, publication, mailing and processing procedures.

## EXHIBIT A

**8. REQUEST FOR A VARIANCE FROM THE PROVISIONS OF:** According to Section 2.05 Variance (Board of Adjustment) "certain circumstances may exist or arise wherein an unnecessary hardship is created through strict adherence to the provisions of these regulations." While there is no specific language that infers a variance can be sought for RC-1 zoning districts, we feel significant hardship has been created that is out of our control and thus seek a variance.

**9. THIS IS A REQUEST FOR A VARIANCE IN RELATION TO THE PROVISIONS OF THE REGULATIONS:** Lot Coverage

**10. STATE SPECIFICALLY THE CHANGES PROPOSED AND THE REASONS SUCH CHANGES ARE NECESSARY:** Due to the topography of the lot (solid rock), there is no available land for a lawn, so in order to create an outside enjoyment area the contractor/owners were forced to build a deck on the second floor. Due to the rock and the adjacent Eagle Bend Clubhouse, we were unable to blast out enough rock for a first floor patio or deck within three feet off the ground. One of the decks appears to have encroached on the 40% permitted lot coverage of the RC-1 permitted lot coverage. There is an additional encroachment of 3.5% of the permitted lot coverage due to the deck(s) and we are seeking a variance to waive this zoning violation.

**11. EXPLAIN HOW YOUR CASE CONFORMS TO EACH OF THE FOLLOWING REQUIREMENTS:**

**(A) Strict Compliance with the provisions of these regulations will:**

i. **Limit the reasonable use of the property:** As noted in question 10, strict compliance with these regulations will not allow for a reasonable sized outside enjoyment area.

ii. **Deprive the applicant of rights enjoyed by other properties similarly situated in the same district:** All of the townhomes on this street have the same topography issue where the land is solid rock and being so close to the Eagle Bend Clubhouse there is no available area for a lawn or patio for outside seating and enjoyment.

**(B) The hardship is the result of lot size, shape, topography, or other circumstance over which the applicant has no control:** As stated above, the land is solid rock, and the contractors/owners were unable to blast through enough for a lawn/patio area or deck within three feet off the ground for outside enjoyment.

**(C) The hardship is peculiar to the property:** This particular lot is made up solely of rock, typically there is at least some area that can be utilized for outside enjoyment but with this lot it simply wasn't an option without the construction of a deck(s).

**(D) The hardship was not created by the applicant:** The contractors/owners had no control over the topography of the lot. The corner pins on the lot did not exist, so the surveyor put offset pins on the top of the rock, at that point, the contractor was focused on the setback requirements and unintentionally missed the RC-1 requirement of a 40% lot coverage maximum. Which, we feel it appropriate to note, that the structure does comply with all the RC-1 setback requirements. Additionally, had the contractors/owners tried to remove all of the rock, a structurally sound AND



## EXHIBIT A



**(E) The hardship is not economic:** The rock no doubt caused significant construction challenges, but a reasonable economic solution was possible for an outside enjoyment area in the form of decks on the second floor that were more than three feet off the ground. To allow for a deck three feet or less off the ground, a substantial amount of the rock would have had to be removed. We built the decks to take advantage of the topography and the posts in the middle deck are less than four feet tall, the outside posts are taller to match the grade. As noted above, to remove the rock would have taken away from the natural beauty and value of the unique topography of the lot, nor would it have been aesthetically pleasing or coordinate with the neighboring townhomes on the street. See attached pictures of neighboring townhomes.



**(F) Granting the variance will not adversely affect the neighboring properties or the public:** Should the board decide to grant the variance, it is our belief the surrounding neighboring properties will not be adversely affected but rather a favorable affect in the form of a beautifully designed and constructed Townhome Duplex to compliment the other Townhomes Duplexes on the street. All of the townhomes on the street to the north were platted and built in the 1980s and have the same topography challenges. If anything, granting a variance here would likely make it easier for the neighboring townhomes should they need to do the same in the future.



## EXHIBIT A

aesthetically pleasing (to the surrounding residences and Golf Course) structure could not have been possible. See attached pictures for reference of the rock in front of the structure.



## EXHIBIT A

**(G) The variance requested is the minimum variance, which will alleviate the hardship:**

We feel the variance of an additional 3.5% of the permitted lot coverage is very minimal and will alleviate the hardship. The owners attempted to buy the property bordering the lot on two sides from Eagle Bend, solid rock to the west or an unusable piece to the south in order to meet the 40% threshold. Unfortunately, dealing with the Colorado corporation that owns Eagle Bend Golf Club proved to be difficult, and the price they were asking was 5-10 times the value. We continue to reach out, but they have stopped responding.

**(H) Granting the variance will not confer a special privilege that is denied other similar properties in the same district:** As noted above, the neighboring townhomes were built before zoned in the 80s. To our knowledge, there is no such variance that was denied to other properties in the same neighborhood. If there are other variances that were denied of the same nature for the same zoning district, it is unlikely they were due to the same challenges we faced with this lot's topography.